

friends to come and find her before the after-school activities bus left. She and the Student walked down the hall in the opposite direction of the bus. The Student pulled her into a classroom at the end of the hallway. The Student began kissing the female student and attempted to remove her brassiere. The encounter continued until the couple heard noises in the hallway. The Student left the girl and went into the hallway, where he saw a classmate at his locker. The female student then walked out of the classroom and caught the utility bus home.

Three days later, the female student reported the incident to the school personnel. The principal held an informal hearing and decided that the Student was guilty of violating rule #23, inappropriate body contact, of the DeKalb County School Disciplinary brochure. The principal suspended the Student for ten days and referred the incident to a student evidentiary hearing committee for a hearing.

During the hearing, one student testified that he heard noises when he was at his locker. He investigated and found the female student lying on the floor with her skirt pushed up and the Student was lying on top of her. He also saw the Student kissing her. Two other students testified that they went looking for the female student. They found the Student holding her arms and the female student was pushed against a closet. The Student Evidentiary Hearing Committee found the Student guilty of violating rule #23, inappropriate bodily contact. The committee suspended the Student for the remainder of the 1990-1991 school year and placed him on probation for the 1991-1992 school year. The Student was given the opportunity to attend an alternative school for the remainder of the 1990-1991 school year so he would not fall behind in his work. The Student appealed to the Local Board. On April 18, 1991, the Local Board upheld the Student Evidentiary Hearing Committee's decision. The Student then filed a timely appeal to the State Board of Education.

PART III
DISCUSSION

On appeal, the Student claims that the charges are not substantiated by the evidence and that he has received double punishment for his behavior. The Student's claims, however, are moot. The suspension period is over and the Student was given the opportunity to make up his school work in an alternative school. The State Board of Education cannot provide any relief to the Student.

Even if the issues were not moot, the appeal does not establish any basis for reversing the Local Board's decision. The standard for review by the State Board of Education is that if any evidence exists to support the decision of the local board of education then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (St. Bd. of Ed., 1976). Rule #23 of the Student Disciplinary Brochure expressly forbids inappropriate bodily contact between or among students, including, but not limited to, sexual contact. The female student and three other witnesses testified that the Student was kissing her and lying on top of her. The Student argues that the charges are not substantiated because he was not showing force nor was the female student calling for help or resisting his advances. The violation, however, is inappropriate sexual contact, which does not involve force or consent. There was evidence to sustain the charges.

The Student also contends that he received double punishment because the principal suspended him for ten days and he was suspended for the remainder of the 1990-1991 school year for the same violation. The issue of double jeopardy, however, is inapplicable in administrative decisions by local boards of education.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board had the authority to suspend the Student and assign him to Alternative School. The Local Board also could place the Student on probation for the 1991-1992 school year. Nevertheless, the issues are moot and the State Board of Education will not exercise jurisdiction over this matter. The appeal, therefore, is hereby

DISMISSED

This 8th day of August, 1991.

Mr. Abrams and Dr. King were not present.

Larry A. Foster
Vice Chairman for Appeals